

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). The opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ZEDRICK DAMIEN TURNBOUGH,

Defendant and Appellant.

G051624

(Super. Ct. No. 14NF3564)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Michael J. Cassidy, Judge. Reversed and remanded with directions.

Richard Power, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Assistant Attorney General, Charles C. Ragland, Scott C. Taylor and Kristen Hernandez, Deputy Attorneys General, for Plaintiff and Respondent.

*

*

*

A jury convicted Zedrick Damien Turnbough of possessing drugs, drug paraphernalia, and metal knuckles. He contends his conviction for possessing metal knuckles (Pen. Code, § 21810; all statutory citations are to the Penal Code unless noted) must be reversed because the object he possessed did not meet the definition of that prohibited item (see § 16920). For the reasons expressed below, we reverse.

I

FACTUAL AND PROCEDURAL BACKGROUND

On August 28, 2014, Anaheim police arrested Turnbough following a traffic stop and found a drug straw and a metal cylindrical object in his pocket. Later, while searching Turnbough at a detention facility, officers found methamphetamine and heroin on his person.

Following a trial in February 2015, a jury convicted Turnbough of possessing methamphetamine (Health & Saf. Code, § 11377, subd. (a) [count three]), possessing heroin (Health & Saf. Code, § 11350, subd. (a) [count four]), possessing metal knuckles (§ 21810 [count five]), and misdemeanor possession of controlled substance paraphernalia (Health & Saf. Code, § 11364.1, subd. (a) [count six].) The trial court found Turnbough had suffered 12 prior robbery strike convictions (§§ 667, subds. (d) & (e)(2)(A) & 1170.12, subds. (b) & (c)(2)(A)) and two prison term priors (§ 667.5, subd. (b)).

In March 2015, the trial court found the drug possession offenses to be misdemeanors under Proposition 47, denied Turnbough's motion to sentence the metal knuckles offense as a misdemeanor (§ 17, subd. (b)(1)), and imposed a four-year prison term (midterm doubled because of the strikes) for possessing metal knuckles. The court struck punishment for the prison term priors and stayed sentencing on the misdemeanors.

II

DISCUSSION

Object Found on Turnbough Did Not Meet Statutory Definition of Metal Knuckles

Turnbough challenges the sufficiency of the evidence to support his conviction for possessing metal knuckles (count 5). Because the object Turnbough possessed did not meet the statutory definition of metal knuckles (§ 16920). We must reverse.¹

Section 21810 provides in relevant part: “[A]ny person in this state who . . . possesses any metal knuckles is punishable by imprisonment in a county jail not exceeding one year or imprisonment pursuant to subdivision (h) of Section 1170.” (See former § 12020, subd. (a)(1).) Section 16920 defines “metal knuckles” to mean “any device or instrument made wholly or partially of metal that is worn for purposes of offense or defense in or on the hand and that either protects the wearer’s hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.” (See former § 12020, subd. (c)(7).)

The trial court instructed the jury here: “Metal knuckles is any device or instrument made wholly or partially of metal that is worn in or around the hand for the purpose of offense or defense that either protects the wearer’s hand while striking a blow or increases the injury or force of impact from the blow.”

In re David V. (2010) 48 Cal.4th 23 (*David V.*) noted that prior to 1985, no statute defined “metal knuckles” and courts relied on dictionary definitions. (*Id.* at p. 26.) In 1984, the Legislature crafted the definition of metal knuckles, as modified in 1988, now contained in section 16920. (*David V., supra*, at p. 27; former § 12020, subd.

¹ We attach a photo of the object alleged to be metal knuckles.

(c)(7).) Reviewing the language of the statute and the legislative history, the Supreme Court concluded the statute applies only to weapons that can be “worn,” meaning attached to the hand. (*Id.* at pp. 25, 27.) The court rejected the Attorney General’s argument “wear” could mean to “bear or carry.” (*Id.* at p. 27.) According to the court, the Legislature did not intend to include weapons “that might merely be grasped while throwing a punch, like rolls of coins [or] batteries” (*Id.* at p. 30.) As the court explained, legislative “committee analyses reflect no consideration of objects that might merely be grasped while throwing a punch, like rolls of coins, batteries, or bicycle footrests. Indeed, had such a broad expansion of the common law understanding of ‘metal knuckles’ been contemplated, the analyses would not have described the proposed legislation as a ‘minor modification’ of existing law.”² (*Id.* at pp.29-30, fn. omitted.) The court also stated, “[A] cylindrical object that cannot be ‘worn . . . in or on the hand’ does not qualify as ‘metal knuckles’ We do not, however, hold that an object must necessarily attach to the hand in a particularly secure fashion to meet the statutory definition. The statutory language is flexible, and implements that are fitted to the hand, or wrapped around it, may qualify as metal knuckles.” (*Ibid.*) *David V.* analyzed the particular item at issue in that case, a metal bicycle footrest, and determined it did not qualify as “metal knuckles” as a matter of statutory interpretation. (*Id.* at p. 27 [courts give words of the statute their ordinary meaning].)

Turnbough contends the object he possessed did not qualify as metal knuckles because it does not fit around the knuckles of the hands. He asserts the item he possessed “is not specifically described anywhere in the Penal Code” and “is a unique

² The court cited a Senate Judiciary Committee Analysis (Sen. Com. on Judiciary, Analysis of Sen. Bill No. 2248 (1983-1984 Reg. Sess.), as amended Mar. 28, 1984, pp. 1-4) describing a particular weapon the Legislature sought to ban, which was a piece of leather covered with 3/4 inch long metal cone-shaped spikes that could be attached to either the back or the palm of the hand with a strap to secure the device to the wrist and leather loops for the assailant’s fingers.

item, more like a shank in some respects than like the classical concept of brass knuckles.” He cites dictionary definitions and other sources “(https://en.Wikipedia.org/wiki/Brass_Knuckles)” to argue “the object in controversy” does not fit within the “common and ordinary meaning[]” of the term “‘brass knuckles’ or ‘metal knuckles’ as understood by ordinary folks out in our society.” He also asserts the prosecution’s experts “had no personal background foundational knowledge as to this specific object” and “were in no position to . . . render an opinion” the object qualified under section 16920. (See Evid. Code, § 801 [qualified expert with special education, training, knowledge, or experience, may provide an opinion if it is based on a subject sufficiently beyond common experience].)

The Attorney General responds Turnbough’s device “could be used as metal knuckles if held in a closed fist so that it is ‘fitted to the hand’ with the metal tubes protruding between the fingers.” She also cites Investigator Schroth’s expert opinion the object qualified as “metal knuckles” based on his examination of the object, his experience in other cases with similar objects, and his interaction with Turnbough.³ The object was similar to others Schroth had seen. It was metal, had two metal tubes projecting from it, and could fit in an individual’s hand. Schroth stated individuals placed such objects in their hands so the spikes protruded from the object, and thereby

³ Before trial, the court conducted a hearing (Evid. Code, § 402) to determine whether Investigator Schroth could testify as an expert concerning metal knuckles. He testified he had 18 years of experience and had received education and training on dangerous weapons and the governing law. As a patrol officer, gang investigator, and crime task force investigator, Schroth had seen a variety of metal knuckles over 50 times in his career. He defined metal knuckles as an object that can be wrapped around or held within the hand and can be made partially or entirely of metal. The object enhances the blow, either offensively or defensively, when the holder strikes another person. Schroth had never seen an object exactly like the object Turnbough possessed. The trial court concluded Schroth had sufficient experience to give an opinion about the object, and it was for the trier of fact to determine if the object actually fell within the relevant Penal Code section.

strengthens the force of the assailant's blow. Individuals told Schroth they used such items for protection, and Turnbough told Schroth he carried the item for that purpose.

The foregoing falls short of the requirement imposed by the Supreme Court in *David V.* The court concluded metal knuckles must be capable of being "worn," meaning attached to the hand in some fashion, however insecurely, without the person grasping the item. Here, the Attorney General states Turnbough's object "could be used as metal knuckles *if held in a closed fist* so that it is 'fitted to the hand' with the metal tubes protruding between the fingers." (Italics added.) Neither officer testified Turnbough's weapon could attach to the hand without holding or grasping it.⁴ As *David V.* explained, the Legislature did not intend to include weapons "that might merely be grasped while throwing a punch, like rolls of coins, batteries, or bicycle footrests." (*David V.*, *supra*, 48 Cal.4th at p. 30.) For example, a corkscrew gripped in the hand with its spiral screw protruding through the fingers might increase the impact of an assailant's blow, but it does not meet the definition of metal knuckles because it is not worn. Because Turnbough's device would not stay attached to the hand without holding or grasping it, it did not meet the statutory definition of metal knuckles.

⁴ We express no opinion whether the statutory meaning of metal knuckles was an appropriate subject for expert testimony, whether the trial court erred or abused its discretion in determining the officers had sufficient expertise to provide expert testimony in this case, and whether the court correctly overruled Turnbough's objections to some of that testimony. (See *People v. Chapple* (2006) 138 Cal.App.4th 540, 548-49 [expert opinion permissible where crime charged consists of elements incapable of determination by the trier of fact without the assistance of an expert; body armor proscribed by section 12370 must be certified based on its ballistic resistance to penetration of ammunition and whether vest met certification standards involved concepts beyond common experience].)

DISPOSITION

The conviction for possession of metal knuckles (count 5) is reversed. The cause is remanded to the trial court for resentencing.

ARONSON, J.

WE CONCUR:

O'LEARY, P. J.

THOMPSON, J.

